

~~7.75~~ ~~Process to Determine Eligibility~~ ^{Proposed}

Revision [note: current Appendix –ARP 7.75-A is also proposed for repeal]

7.75 – Ineligibility for Rehire Status Designation v010319

PART 1: INTRODUCTION

PURPOSE

~~This Rule assists the university to maintain a secure and safe campus and an effective and efficient work environment. It provides a process for management, working in coordination with the Office of HRS Employee and Labor Relations, to determine whether an employee or rule protects NMSU from rehiring former employee (also referred to as “affected employee”) should be deemed ineligible for rehire within the NMSU System.~~

~~PART 2: CONDITIONS REQUIRED TO CHANGE STATUS TO INELIGIBLE FOR REHIRE~~

~~Affected employees may be deemed ineligible for rehire, if their separation from employment was based on or preceded by serious misconduct who separated from NMSU due to improper or incompetent conduct detrimental to the mission and interests of the university-, or while under scrutiny due to allegations of such conduct.~~

PART 2: INELIGIBILITY DESIGNATION

~~An individual who voluntarily or involuntarily separates from NMSU employment under any of the following circumstances are designated as ineligible for rehire: (1) the employment at NMSU is terminated for just cause, (2) the individual resigned or retired while the subject of an investigation into allegations of serious misconduct or after a pre-termination notice had been issued to the individual, or (3) where serious misconduct by the individual is discovered and substantiated after the employee resigns or retires. For misconduct discovered after the separation to result in a determination designation of ineligibility for rehire, ~~if the misconduct~~ ^{the misconduct} must be ~~capable of being proven by a preponderance of the evidence and be~~ of such a nature that it ~~either did or~~ would have supported an involuntary termination under the applicable disciplinary policy ~~or rule~~. This Rule applies in situations where the affected employee is terminated for just cause and also in situations where misconduct is discovered and/or substantiated by an internal investigation and procedures.~~

PART 3: PROCESS

- ~~A. **Effectuating Designation.** Consistent with Parts 1 and 2 above, when circumstances warrant a designation of ineligible for rehire, the director of Human Resources Services – Employment and Labor Relations (HRS-ELR) will effectuate the designation in the appropriate personnel record.~~
- ~~B. **Petition for Reinstatement:** Any individual who has been designated as ~~or after the employee resigns or retires,~~ ineligible for rehire may petition for reinstatement of eligibility. In cases where the individual believes that the designation was improper, the individual may petition at any time. In other cases where the designation was initially valid, after a period of one year has elapsed, the individual may petition for~~

reinstatement of eligibility based upon a change of circumstances indicating that (1) the individual is unlikely to repeat the conduct resulting in the designation, and (2) is capable and likely to make a positive contribution to some aspect of the university mission. The affected individual may contest the designation as ineligible for rehire or petition for removal of the designation by submitting a written Petition for Ineligibility Review to the associate vice president for human resource services (AVP HRS), along with any supporting documentation.

~~PART 3: PROCEDURES (See Also Appendix ARP 7.75-A)~~

~~STEP 1: Review of Facts Supporting Change in Status; Time Deadline:~~

- ~~1. The dean, vice president or equivalent unit leader of the supervising department provides documentation in support of a request to change an affected employee's status to ineligible for rehire.~~
- ~~2. HRS ELR reviews and if it concurs, it will manage the process to generate and send the appropriate notice to the affected employee.~~
- ~~3. The notification to an affected employee shall be given within one year from the date that facts or allegations are discovered by supervisory management which may require a formal investigation; if no action is taken under this rule within the year, it shall be time barred. An exception to this rule may be allowed in the event that an inability to locate the affected employee prevents timely notification, and in that case, the deadline shall be tolled until the affected employee is located.~~

~~**STEP 2: Written Notice to Affected Employee:** Affected employees will be given written notification by HRS ELR of the factual basis/es supporting a change in employment status to ineligible for rehire. This notice may be given either: 1) during an exit interview process, 2) in a notification part of an involuntary termination proceeding; or 3) if the employee has already separated from the university, by written notice delivered to the employee. Delivery may be accomplished by any means including but not limited to personal delivery, e-mail or fax, certified mail or regular first class mail. If a mailed document is not returned as undeliverable, there shall be a presumption of delivery.~~

~~**STEP 3: Affected Employee's Right to Contest:** Unless the notification is/was part of a proposed termination action (which is contested in a distinct pre-determination hearing and appeal process), the affected employee may contest the change in status by submitting a request for formal review to HRS Employee and Labor Relations within ten (10) working days from receipt of the written notice form HRS ELR.~~

~~**STEP 4: HRS ELR Provides Documentation Support of Change in Status:** If the affected employee requests a formal review, within ten (10) working days from receipt of the request, HRS ELR will provide the documentary or other evidence which supports the proposed change in status.~~

~~**STEP 5: Affected Employee Submits Documentation Opposing Change in Status:** The affected employee shall have thirty (30) working days to deliver a written statement to the Assistant Vice President for Human Resource Services explaining the reasons the affected employee believes the change in status is not warranted.~~

~~**STEP 6: Review and Official Decision by HRS or EVP/Provost Office:**~~

- ~~1. If the affected employee was a student or staff, the determination review will be conducted by the assistant vice president for human resource services or designee.~~

- ~~2. If the affected employee was faculty, HRS-ELR will forward to the executive vice president and provost or designee for a decision.~~
- ~~3. The assistant vice president for human resource services or designee or the executive vice president and provost or designee, as appropriate, after consultation with General Counsel, will review the matter and render an official decision on behalf of NMSU within thirty (30) working days from the date of receipt of the written statement from the affected employee. The decision may uphold, reverse or modify the proposed determination of ineligibility and will be the university's final decision.~~
- ~~4. The Decision may be delivered using any of the methods described above for delivery of the notice of proposed change in employment status.~~

C. **Response to Petition:** Within 30 days after receipt of the petition, the AVP-HRS will review the petition and any submitted information, will make any further inquiries considered appropriate, and will issue and will make a decision to grant or deny the petition. Where the petition is denied, the matter is closed and another petition may not be filed for a period of one year. Where the petition is granted, the AVP-HRS will cause the designation to be removed from the individual's personnel record and the individual will be notified of their renewed eligibility for employment at New Mexico State University.